

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **VICE CHAIRMAN MIKE SPRAGUE**, on January 10, 2003 at 3:50 P.M., in Room 335 Capitol. *{Tape: 1; Side: A}*

ROLL CALL

Members Present:

Sen. John Cobb, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 8, 12/5/2002; SB 54,
12/12/2002; SJ 3, 12/16/2002
Executive Action: SB 54; SB 1

HEARING ON SB 54

Sponsor: SENATOR JOHN BOHLINGER, SD 7

Proponents: None.

Opponents: None.

Informational Testimony: Dulcy Hubbert, Commission of Political Practices (COPP); Jim Scheier, COPP; Com. Linda Vaughey, COPP

Opening Statement by Sponsor: SEN. BOHLINGER, SD 7, said SB 54, revises laws governing the Commissioner of Political Practices. That office sets standards of conduct for public office holders. In 1947, to provide oversight and to establish ethical standards for elected officials, the office of Commissioner of Political Practices was established. SB 54 provides important changes to present law. 1) It strikes from present law the ability of the Governor to remove the Commissioner of Political Practices from office. 2) It states that the Commissioner must be a citizen of the United States and a resident of Montana. The Commissioner may not be a public office holder or public employee at the time of appointment. He or she cannot be a candidate for public office, be a registered lobbyist, or have a member of the immediate family who is a public office holder, public employee, candidate, lobbyist or principal. 3) SB 54 places some restrictions on the Commissioner of Political Practices. It prohibits the COPP from participating in any political activity or political campaign; from making financial contributions or engaging in any activity supporting or opposing a candidate, a political committee, or a ballot issue. **EXHIBIT(sts05a01)**

SEN. BOHLINGER proposed an amendment to SB 54.

EXHIBIT(sts05a02) It deals with questions of nepotism.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: Mark Mackin, Helena valley, one of the original sponsors of the initiative creating the lobbyist disclosure act, expressed concern about restricting candidates for Commissioner of Political Practices from being a public employee. He said it would disqualify many qualified people.

Linda Vaughey, Commissioner of Political Practices, made two comments: 1) Regarding EXHIBIT (1), removing statutory authority from the Governor to have the Commissioner removed, does not mean that the Commissioner would have no oversight. The Commissioner, as holder of public office, would still be subject to recall for "physical or mental lack of fitness, incompetence, violation of oath of office, official misconduct, or conviction of a felony offense" under Title 45. 2) Speaking to Mr. Mackin's concern about prohibiting the Commissioner from being a public employee, Com. Vaughey said it was necessary because public employees are under the jurisdiction of the Commissioner of Political Practices vis-a-vis the ethics laws. A public employee would have to resign prior to the assumption of duties of the office.

Questions from Committee Members and Responses: **SEN. SQUIRES**

asked **Linda Vaughey, COPP**, what problem SB 54 solved in her office. **Com. Vaughey** said it that wasn't the issue. When she was appointed COPP, there was provision for an ethics commission. That commission was never appointed in the five years the statutes were on the books, largely due to difficulty finding people who would disassociate themselves from any political activity or any of the other provisions, many of which are included in SB 54. **Com. Vaughey's** attitude toward ethics laws is that they are a roadmap to keep people out of trouble, not to go after people who are making mistakes. She conversed with her predecessors to find out what things they felt were ethically important in terms of serving in the position of Commissioner. She said SB 54 creates a roadmap. Its provisions should be accepted by a person serving as Commissioner.

SEN. SQUIRES asked if, basically, all the new section does is ensure that the COPP not engage in political activities. **Com. Vaughey** said yes.

SEN. WHEAT asked, under the new Section 5 which establishes some statutory restrictions for the COPP, who would be overseeing the COPP? If there were a violation, what would happen? **Com. Vaughey** said under Title 45 there are provisions for recall. Part of her oath of office is to adhere to all the laws and rules that govern her office. If she were to violate any of the provisions, she could be recalled. **SEN. WHEAT** asked if recall was the only way she could be removed from office for malfeasance. **Com. Vaughey** said she believed so.

SEN. SPRAGUE said he knew of no one under more scrutiny. He asked if she was in favor of SB 54. **Com. Vaughey** said yes. **SEN. SPRAGUE** asked if the bill originated in her office. **Com. Vaughey** said she discussed it with Sen. Bohlinger. It would be useful to a person coming into the position to have the restrictions laid out, clearly and directly. She doesn't know of another ethics commission in the United States that does not impose similar kinds of restrictions. **SEN. SPRAGUE** said he assumed she was in favor of the amendment. **Com. Vaughey** said yes.

Closing by Sponsor: **SEN. BOHLINGER** thanked the committee.

CHAIRMAN COBB returned to the room, and took the chair. He said Executive Action on SB 54 would not be taken at this time.

MOTION TO RECOMMEND PROXY VOTES

Motion/Vote: **SEN. SPRAGUE** moved to recommend the committee accept **PROXY VOTES**. Motion carried unanimously.

BRIEFING ON UPCOMING LEGISLATION

Pat Murdo, Legislative Services, distributed a packet of exhibits relating to SB 4 and SB 50, to be heard in Senate State Administration next week: Montana, Secretary of State EXHIBIT(sts05a03); State Administration and Veterans' Affairs Interim Committee report, November 1, 2002, Rulemaking Authority Issues with Restructuring Veterans' Affairs EXHIBIT(sts05a04); State Administration and Veterans' Affairs Interim Committee report, July 26, 2002, Montana Veterans' Affairs: Statutory Provisions Related to Administrative Attachment and Rulemaking EXHIBIT(sts05a05); State Administration and Veterans' Affairs Interim Committee report, November 2002, Veteran's Affairs: A House Divided, a Report to the 58th Legislature EXHIBIT(sts05a06); Comparison of Differences in SB 4 and SB 50 Regarding Changes in State Administration of Veterans Affairs EXHIBIT(sts05a07); Montana Department of Military Affairs (a schematic) EXHIBIT(sts05a08); Montana Veterans' Affairs Division (a schematic) EXHIBIT(sts05a09)

Ms. Murdo introduced **Jason Thielman, Chief Deputy Secretary of State**, who introduced staff members **Janice Doggett, Chief Legal Counsel**, and **Elaine Graveley, Deputy for Elections**.

CHAIRMAN COBB interrupted the briefing for the hearing on SJ 3.
{Tape: 1; Side: B}

HEARING ON SJ 3

Sponsor: **SENATOR BILL TASH, SD 17**

Proponents: **Dick Crofts**, Montana University System (MUS); **Roger Hagan**, Enlisted and Officer Associations of the Montana National Guard; **Brigadier General Randy Mosley**, Department of Military Affairs (DMA)

Opponents: None.

Opening Statement by Sponsor: **SEN. TASH, SD 17**, said SJ 3 offered an educational leave of absence to National Guard members called to active duty. He said the amendment didn't hurt the intent of the bill.

Proponents' Testimony: **Brigadier General Randy Mosley, Assistant Adjutant General for the Army National Guard, and Deputy Director for the Montana Department of Military Affairs**, said SJ 3 urges the Board of Regents to adopt a policy granting an educational leave of absence to a member of the Montana National Guard, or

any other reserve complement of the U.S. Armed Forces, who is called to active duty. For the Montana National Guard, that includes State active duty. SJ 3 seeks a policy that will restore a student to the full educational benefit that student has attained prior to performing the active military duty, including any academic credits earned; or scholarships, grants or fee waivers received. SJ 3 also urges that the student returning from active military duty be offered a refund of tuition or fees paid, or provided a credit for tuition and fees paid for the subsequent semester or academic year. **Brigadier General Mosley** said the resolution is not brought forward to fault the university system. It addresses the level of uncertainty and anxiety that active duty mobilization causes among young National Guard members, who don't know what is going to happen or how mobilization will affect them. Between 200-300 National Guardsmen are students. Prior to mobilization guardsmen are briefed concerning their rights for re-employment, for civil relief if they have actions against them, and so on. Students are told the status they will find themselves in, as far as their education is concerned, when they return from active duty. The Guard wants a consistent, uniform policy for students who are also National Guardsmen called to active duty--known ahead of time. A policy would also provide the university system a mechanism to plan instruction for soldier-students. SJ 3 urges the Board of Regents to develop such a policy. **EXHIBIT(sts05a10)**

Dick Crofts, Commissioner of Higher Education, rises in support of SJ 3. Referring to page 2, lines 14-23, he said the university system is already doing the things covered in the first two items, numbered (1) and (2). He recommends, in lieu of (3), wording similar to: "Refund tuition or fees paid by the member for courses enrolled in at the semester the individual was called up." In other words, there is no point in holding money awaiting a student's return. In the past, firefighters have been given ample opportunity to complete course work; that will not be helpful for students called to active military duty. It would be best to give the money back.

Roger Hagan, representing the 3,000 members of the **Officer and Enlisted Associations of the National Guard of Montana**, thanked the Department of Military Affairs, and the sponsor for SJ 3. He reiterated that there have been no problems with the university system. What is needed is something similar to the Uniform Re-employment Rights Act, that says students will be treated as though they never left. If someone is gone as long as two years, the course curriculum catalog may have changed; some of the courses taken toward a major may no longer be applicable. It is also important to standardize a policy regarding reimbursement of tuition and fees. **EXHIBIT(sts05a11)**

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. WHEAT** asked for clarification about how mobilization to active duty was now being handled; and if situations, as delineated in points numbered (1) and (2), already were being done. **Com. Crofts** said yes; not as policy, but as consistent practice. **SEN. WHEAT** asked, if passed, would the university system and the Board of Regents adopt a written policy in compliance with the resolution. **Com. Crofts** said, though he is soon leaving, he believes that is what would happen. He doubted a policy would be written talking about a military leave of absence. Rather, the policy would refer to what would happen when a reserve member was called to active duty. It would be consistent to what has been done in the past. **SEN. WHEAT** said the reason for the question was that he wondered if **Com. Crofts** agreed with **Mr. Mosley** that some consistent policy could be relied upon by both the National Guard and the university system. **Com. Crofts** said he could see potential drawbacks; policy can be more restrictive than good professional judgment. There is also an advantage.

SEN. SPRAGUE asked **SEN. TASH** to explain in his close why SJ 3 is presented as a resolution. **Sen. Tash** said the outcome would be a recommendation, and implementation would be left unspecified.

Closing by Sponsor: **SEN. TASH** said a resolution was all that could be done as far as setting statute for the university system. He said he would incorporate the friendly amendment.

Discussion: **Pat Murdo, Legislative Services**, read a proposed amendment, substituting for (3) "refunding tuition to, or fees paid by the members for the term when the enrolled student was called to active duty."

SEN. SQUIRES noted that tuition is not always paid by the student. There are agencies and/or others who pay or participate in funding. That money should go back into the program.

SEN. GEBHARDT suggested wording (3): "At the option of the student returning from a military leave of absence, refund tuition or fees paid by the member." That would take care of the issue **Sen. Squires** brought up, and refund money the person actually made.

SEN. SPRAGUE noted that a student with a grant would want to know that the grant money would be there waiting, and not have to reapply.

CHAIRMAN COBB said no action would be taken now. The wording of the amendment will be worked out by staff before Executive Action on SJ 3 is taken.

BRIEFING ON UPCOMING LEGISLATION, cont.

Sheri Heffelfinger said the U.S. Congress passed the Help America Voting Act (HAVA) in October. The country, including Montana, has responded in various ways to the Presidential election crisis of 2002. Equal Protection for Your Votes: Montana's Voting System and Vote Counting Process, is a report to the 58th Legislature by the State Administration and Veteran's Affairs Interim Committee for the 2001-2002 interim. **EXHIBIT(sts05a12)**

Ms. Heffelfinger noted several bills brought forward this session by the Secretary of State which have to do with Federal acts considering issues of equal protection for votes. They are indicated on Montana Legislature Bill Search Results: Elections & Campaign Finance. **EXHIBIT(sts05a13)**

Ms. Heffelfinger said the interim committee had also been concerned with homeland security. There are no committee bills for homeland security this session, but there are three bills--HB 115, HB 200 and LC 1889--relating to emergency health powers. Typically, State Administration works with disaster and emergency services, under the Department of Military Affairs. She distributed Disaster and Emergency Services (a schematic) **EXHIBIT(sts05a14)**

Ms. Heffelfinger distributed two handouts relating to Montana's retirement system: Montana Legislature Bill Search Results: Public Employee Retirement Legislation EXHIBIT(sts05a15), and Montana's Public Employees' Retirement Plans: Summary Tables, on green paper. **EXHIBIT(sts05a16)** She suggested Legislators keep the green pages in their folders for reference. It has information that will be useful during the session. It summarizes eight different Montana public employee retirement plans, and provides information for three additional retirement plans: Volunteer Firefighters' Compensation Act, PERS Defined Contribution Retirement Plan, and the University System Optional Retirement Plan.

EXECUTIVE ACTION ON SB 54

CHAIRMAN COBB asked whether the committee was ready to take executive action on SB 54.

Motion/Vote: **SEN. SPRAGUE** moved that the **AMENDMENT TO SB 54 DO PASS**. Motion carried unanimously. *{Tape: 2; Side: A}*

Motion/Vote: **SEN. SPRAGUE** moved that **SB 54 DO PASS AS AMENDED**. Motion carried unanimously.

HEARING ON SB 8

Sponsor: SENATOR MIKE SPRAGUE, SD 6

Proponents: None.

Opponents: None.

Opening Statement by Sponsor: SENATOR MIKE SPRAGUE, SD 6, said SB 8 is an act to be submitted to the voters because it is a constitutional change. The way the Constitution reads now is unclear. The number of legislators can be changed, but the wording is vague as to who can change it. SB 8 gives that decision to the legislature if, for whatever reason, it decides to make a change. There is a companion bill, SB 9, that considers whether or not there should be changes in the number of counties. When **SEN. SPRAGUE** requested the bill, he found that **Greg Petesch** had written a report for the Law Review on the subject. **Mr. Petesch** took it upon himself to write SB 8 and SB 9 himself. **SEN. SPRAGUE** asked **Mr. Petesch** to make comments on his Law Review article and the bill.

CHAIRMAN COBB explained that SB 8 and SB 9 were to have been heard the same day. There was a problem with posting. Since they are Constitutional amendments, there was 72-hour notice required, that presented a problem. SB 9 will heard Friday, January 17. No action will be taken on SB 8 until after both bills have been heard.

Informational Testimony: Gregory J. Petesch said that although he is **Legal Director, Legislative Services Division (LSD)** the Law Review article was written on his own time. **EXHIBIT(sts05a17)** He said that **SEN. SPRAGUE** submitted a bill draft request to change the size of the legislature, and SB 8, in the form of a Constitutional amendment, is what he got back. The Montana Constitution says the size of the Legislature is a House of between 80-100 members, and a Senate of between 40-50 members ; and that two House districts comprise a Senate district. (Article 5, Section 2, Montana Codes Annotated (MCA)) However, there is also a requirement in the Constitution that one-half of the Senators have to be elected every two years. (Article 5, Section 3 MCA) When the 1974 Districting and Apportionment Commission met, they decided to leave the number of Senators at 50, and the number of Representatives at 100 because, in their words, "it was more appropriate to leave the size of the Legislature to the Legislature in the next session, or in the next reapportionment cycle." By locking in the size of the Senate at 50, any ability to reduce the size of the Legislature (as authorized by Article 5, Section 2 MCA) was effectively eliminated. This is because of

the requirement that one-half the Senators be elected every two years. In order to allow the provision in Article 5, Section 2 MCA to be implemented if either the Legislature or the Districting and Apportionment Commission decides to exercise that authority, there is a statute, Section 5-1-101(2) MCA that provides that the Legislature may instruct the Districting and Apportionment Commission as to the number of districts to create. **Mr. Petesch** believes that section is also rendered ineffective by the requirement for the election of half the Senators every two years. SB 8 really authorizes the provision of the Constitution on the size of the Legislature and the statutory implementation to be made effective should anyone ever desire to do so.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. WHEAT** asked for clarification of SB 9, the companion bill. **SEN. SPRAGUE** said it gave the Legislature the ability to change the number of counties.

SEN. SQUIRES asked for clarification about how the ratio worked; if the number of Senators and Representatives affected the number of counties. **Mr. Petesch** said the bills are independent and stand alone.

Closing by Sponsor: **SEN. SPRAGUE** said the bills were companion bills in the sense that both, if passed, would go to the vote of the people as Constitutional amendments. They are independent in the sense that one may fail and the other succeed. Most people believe that the matters these bills address can be done now. The Constitution is not clear.

CHAIRMAN COBB said Executive Action on SB 8 would be held pending the hearing of SB 9.

EXECUTIVE ACTION SB 1

Motion: **CHAIRMAN COBB** moved that **SB 1 DO PASS**.

Discussion: **SEN. SQUIRES** asked if there were amendments. **CHAIRMAN COBB** said no.

SEN. WHEAT said he was going to vote for SB 1; but he is probably not in favor of it. It's a bill that should be discussed on the floor of the Senate.

Substitute Motion: **SEN. SPRAGUE** made a **SUBSTITUTE** motion to **INDEFINITELY POSTPONE SB 1**.

Discussion: SEN. SQUIRES said she agreed with SEN. MCCARTHY. Many constituents in Missoula have told her they thought term limits of U.S. Congressional people were affected, not State Legislators. Because of the confusion, people should have another chance to vote.

Closing on Motion: SEN. SPRAGUE said everyone was a little nervous about SB 1. Term limits have already been on the ballot. It is a philosophical question as to whether or not it should be returned for popular vote. He said he is seeing good results from the passage of term limit restrictions. Granted, good people have been lost; but incredible people are coming up. If the public sees a real problem, they should get involved by requesting a petition.

Vote: SUBSTITUTE motion SB 1 FAILED 2-3 with Cobb, Squires, and Wheat voting no.

Motion/Vote: CHAIRMAN COBB moved that SB 1 DO PASS. Motion carried 3-2 with Gebhardt and Sprague voting no.

Announcements: CHAIRMAN COBB said MS. Murdo would talk about informational material for the up-coming hearings of SB 4 and SB 50. The Veteran bills are controversial.

CHAIRMAN COBB turned the committee over to Sen. Sprague.

Ms. Murdo explained the materials in the packet on Veterans' Affairs. It includes both bills, an information sheet addressing the differences in the bills EXHIBIT (7), a flow chart EXHIBIT (7), and a report on rulemaking for general veterans' affairs EXHIBIT (5).

CHAIRMAN SPRAGUE asked if the audit report delineated what was broken. Ms. Murdo said she could make copies.

CHAIRMAN SPRAGUE asked if all the controversy was caused because they don't have oversight of the cemeteries. Ms. Murdo said it had gone beyond that.

SEN. SQUIRES told the committee how she thought the two bills came to the Legislature: SB 4, from Sen. Roush's committee, and SB 50 from a faction that believes Sen. Roush's committee was misinformed.

Ms. Murdo noted that there were proponents and opponents of restructuring. It may come to be a compromise.

CHAIRMAN SPRAGUE said SEN. COBB would like to see agreement, or status quo.

SEN. SQUIRES remarked there was also something about license plate money--the issues were a conglomeration.

CHAIRMAN SPRAGUE, referring to calls he received prior to the session, said he asked people to get their problems resolved before the Legislature.

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ADJOURNMENT

Adjournment by **Chairman Sprague**: 5:10 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

JC/MS

EXHIBIT (sts05aad)